Supreme Court, U.S.
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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1997

WOODY VOINCHE
Appellant

v.

FEDERAL BUREAU OF INVESTIGATION
Appellee

On Appeal From
The DC Circuit
Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

WOODY VOINCHE
Pro Se Appellant
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318-253-7788

65 pp

QUESTIONS PRESENTED

This is a Freedom of Information Act case and the major issues revolve around whether the government's affidavits are conclusory and whether the government can exempt whole documents. The questions presented are:

I) Whether the government's Affidavits are conclusory and are insufficient to establish exemptions claimed?

II) Whether the government can exempt whole documents?

III) Whether the FBI should index CIA documents obtained as the FBI's own documents and whether the CIA's response was appropriate?

IV) Whether Discovery and In camera inspection are appropriate in this case?

V) Whether the Plaintiff can recover fees and costs?

LIST OF PARTIES

The parties involved in this case are the Plaintiff, Woody Voinche, and the Defendants, the Federal Bureau of Investigation, and the US Attorney's office.

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1997
No._____

WOODY VOINCHE
Appellant

v.

FBI
Appellee

Petition for Writ of Certiorari to the United States Court of Appeals for the DC Circuit

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Plaintiff filed a Freedom of Information Act complaint in the US District Court for the District of Columbia and appealed it to the US Court of Appeals for the DC Circuit. On April 3, 1996, Judge Charles R. Richey, for the US District Court issued an Order for the FBI to file its Vaughn Declarations **APPENDIX-A.** On Sept. 24, 1996, the Court issued a Memorandum Opinion and Order Granting the Defendants Motion for Summary Judgment these have been labeled **APPENDIX-B**. On Dec. 4, 1996, Judge Richey issued another Order denying the Plaintiff's Motion for Fees and Costs and this

has been labeled **APPENDIX-C**. The Plaintiff appealed and the US Court of Appeals for the DC Circuit entered a Judgment and Memorandum dated June 19, 1997, **APPENDIX-D**, Affirming the Orders of the District Court.

JURISDICTION

This is an appeal from a Judgment and Memorandum of the US Court of Appeals for the DC Circuit dated June 19, 1997, and brought forth under the provisions of the Freedom of Information Act.

This Petition is filed within 90 days of the above date and the jurisdiction of this Court is invoked pursuant to 28 USC Section 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTIONAL:

There are no constitutional provisions involved in this case.

STATUTORY:

This suit was initiated under the general provisions of the Freedom of Information Act, 5 USC 552, passim, and the Plaintiff's arguments are based on case law requirements and the facts surrounding this case.

STATEMENT OF THE CASE

On Sept. 23, 1993, the Plaintiff, sent a letter requesting information the FBI had concerning the subject discussed on the Sept. 16, 1991, Geraldo Rivera show on

FBI wiretaps at the Supreme Court, "overhears" of conversations Justices had with third parties, Hoover's O and C files, Kissinger wiretaps, mail openings, etc. Some of this information had already been released to Durham, NC, attorney, Alexander Charns.

By a letter dated, May 24, 1994, the FBI made a partial release of 152 pages of documents to the Plaintiff relating to the Supreme Court, but, claimed partial exemptions on some documents, claimed full exemptions on other documents, and stated other documents would be addressed in future correspondence.

The Plaintiff had appealed FBI responses prior to the above release of documents and on Jan. 23, 1995, the Plaintiff, sent a second appeal letter for the partial release of documents and exemptions claimed in the FBI's May 24, 1994, response.

The FBI acknowledged receipt of my appeal in 3 different letters, stating there was a "backlog" of appeals, but, informed the Plaintiff of "your right to judicial review." By Oct. 16, 1995, the Plaintiff, filed a Complaint in the US District Court for the District of Columbia under the provisions of the Freedom of Information Act.

After a scheduling conference, Judge Charles R. Richey, issued an order for the Defendant to file a Vaughn index in support of its decision to withhold documents by March 9, 1996. Then, after several requests for enlargement of time by the Defendant, the Court, on April, 3, 1996, Ordered (See **APPENDIX-A**) the FBI to file a first Vaughn declaration for the first 152 pages of documents already released and for the parties to attend a status conference on May 31, 1996, and to be able to discuss the production of other Vaughn declarations on those documents not released by that time.

After the parties appeared before the Court for the May 31, 1996, status conference, Judge Richey, issued

several minute Orders for the FBI to produce second Vaughn Declarations and accompanying Motions for Summary Judgment.

Ultimately, the FBI, issued several Declarations in reference to this case. A Second Declaration of Richard D. Davidson was issued with nearly 161 descriptions of documents for Exemption one claims under the FOIA. A Second Declaration of John M. Kelso, Jr. which gives a description of many of the documents in question in this case.* **APPENDIX-E**. A Third and Fourth Declaration **APPENDIX-F** of John M. Kelso, Jr. which supplemented his second on referral of documents to the CIA on Justice Douglas and A Declaration of William H. McNair with the CIA on a 5 page document referred by the FBI on the "clandestine mail-opening program called HTLINGUAL" and the HUNTER program.(**APPENDIX-G**).

On Sept. 24, 1996, the District Court Filed a Memorandum Opinion and Order GRANTING the FBI's Motion for Summary Judgment(See **APPENDIX-B**); And Filed a an Order on Dec. 4, 1996, DENYING the Plaintiff's Motion for Fees and Costs. The Plaintiff appealed to the DC Circuit and on June 19, 1997, the Court of Appeals for the District of Columbia Circuit affirmed(See **APPENDIX-D**) the Orders of the District Court.

ARGUMENT 1

WHETHER THE GOVERNMENT'S AFFIDAVITS ARE CONCLUSORY AND ARE INSUFFICIENT TO ESTABLISH EXEMPTIONS CLAIMED?

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* We have entered at **APPENDIX-E** only a pertinent 8 out of 39 double spaced pages of the Kelso Declaration which translates into a smaller number of single spaced pages at the appendix.

The Plaintiff appeals this case as he believes there are genuine issues of material fact that exist and the Plaintiff believes the government's affidavits are "conclusory" and are "insufficient to establish exemptions claimed." Vaughn v. Rosen, 484 F2d 820(DC Cir. 1973) p. 820. The FBI relied on general assertions that release might be "detrimental to national security" and "only generalized theoretical discussion of possible harms which could result from release of information" making the government's affidavits inadequate. Wiener v. FBI, 943 F2d 972(9th Cir. 1991) pp. 973-4.

Even the District Court, in its Ruling of Sept. 24, 1996,(**APPENDIX-B**, p. 9a) "...finds these Vaughn index entries **troubling**...", but, accepts them because of Mr. Davidson's "thorough" declarations; because of the DOJ's Review Committee's acceptance; and because of the Defendant's adequate detail of Vaughn entries of non-classified materials.

The Plaintiff attaches 2 representative examples of Description Of Document** **APPENDIX-H**. These Descriptions of Document 36 and 86 are identical and parrot the previous and other descriptions except for a change of document number. Most of these Descriptions have no dates or identification numbers, are conclusory, and paint with a broad brush the same exemptions claimed, using the same language for numerous documents and are "insufficient to establish exemptions claimed" in violation of Vaughn v. Rosen.

There are discrepancies between statements made in the affidavits and the records released, making the gov-

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These are 2 Descriptions of nearly 161 Descriptions Of Documents attached as **APPENDIX-H. These Descriptions were attached to the Second Declaration Of Richard D. Davidson which is not presented in this Writ, but, was attached to the Appendix of the Plaintiff at the DC Circuit level.

ernment's statements "controverted by contrary record evidence" and the Plaintiff believes the FBI used a coded format disallowed in King v. US Dept. of Justice, 830 F2d 210(DC Cir. 1987).

On page 31a of the Second Declaration of John M. Kelso, Jr., (**APPENDIX-E**) he describes,

> The fifth group of documents are the Electronic Surveillance(Elsur) records maintained on Douglas at the New York Field office...

This contradicts the statement made at (Exhibit SJ-1) **APPENDIX-I** that,

> The names of Justices have been searched through the electronic surveillance indices... This review fails to show that any of the Justices have been the subject of electronic surveillances...p. 41a

On page 34a of the Fourth Declaration **APPENDIX-F** of John M. Kelso, Jr., he states,

> ...former Justice Douglas was never the target of any electronic surveillance, although, his name was mentioned or his voice was overheard and made a matter of record in monitored conversations of other individuals.

If as the FBI claims, these are overhears, and they are a matter of record, then, why are the documents described in the Second Kelso as the fifth group of documents completely redacted?***

***At Exhibit 2 attached to the Appendix of the Plaintiff's

We also note here, other records show Justice Douglas thought he was a target of "electronic surveillance" at the Whistlin' Jack Motel.(Document**139-4370-7)** **APPENDIX-J.** In the 1930's the Chief Justice thought the conference room of the Supreme Court was bugged(Document **62-46240-10)** **APPENDIX-K** and in the 1970's another Chief Justice thought the conference room was bugged.(Document **66-3491)** **APPENDIX-L.**

So, there are discrepancies in the affidavits and records and many of these are conclusory and insufficient to establish exemptions claimed, and these Vaughn index entries are "troubling".

This is a compelling reason for this Supreme Court to ***GRANT*** this Writ Of Certiorari as these documents pertain specifically to this Court and imply that an artificially created agency may be using sophisticated technology to try to *influence* this Honorable Court. The Plaintiff is not interested in records pertaining to the personal lives of the Justices, but, only to the extent that this agency is violating the *searches and seizures* clause of the constitution and the extent to which these agencies may be engaging surveillance of the Court. We believe all of these documents should be released in unredacted form to this Supreme Court for In camera review!

ARGUMENT II

WHETHER THE GOVERNMENT CAN EXEMPT WHOLE DOCUMENTS?

If the Court looks at the documents as they have been released to the Plaintiff or the samples the Plaintiff enter-

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Brief at the DC Circuit level are a representative example of documents released to the Plaintiff and are mostly completely blacked out and redacted.

ed at his Appendix attached to his brief at the DC Circuit level, it is clear that many of the documents are totally exempt and redacted. Case law has already shown,

> ...an agency may not rely on the 'exemption by document' approach...the agency must provide a reasonable segregation as to the portions of the document that are involved in each of its claims for exemption. Ray v. Turner, 587 F2d 1187(DC Cir. 1978).

A Court should make "specific findings" whether exempt portions of documents under FOIA could be "segregated". Krikorian v. Department of State, 984 F2d 461 (DC Cir. 1993) p. 463. See also, Powell v. US Bureau Of Prisons, 927 F2d 1239(DC Cir. 1991); and Schiller v. NLRB, 964 F2d 1205(DC Cir. 1992).

ARGUMENT III

WHETHER THE FBI SHOULD INDEX CIA DOCUMENTS OBTAINED AS THE FBI'S OWN DOCUMENTS AND WHETHER THE CIA'S RESPONSE WAS APPROPRIATE?

On page 5 of the FBI's Reply Memorandum In Support Of Defendant's Motion For Partial Summary Judgment, the Defendants state,

> Plaintiff, while conceding that he asked for only one serial of the FBI's records on the CIA's clandestine mail opening program, asks that he be provided a list of the documents from all of the FBI's serials relating to the CIA's program.

This is not exactly right, the Plaintiff, never conceded that he asked for only one serial. In fact, the Plaintiff, cited this "Hunter Report" and also referred to it as FBI-CIA mail opening. This is the way it was described in the Alexander Charns book, CLOAK AND GAVEL, so it was not clear how many documents the FBI had on this. The FBI has only recently revealed there is more than one serial. From page 185 of the Charns book, he states TIME magazine claimed Justice Douglas was "amoung the targets of CIA surveillance", so the FBI may have more documents on this subject and should list these as the FBI's own documents.

> ...within Freedom of Information Act, relevant issue is whether agency covered by Act has created or obtained material sought, not whether organization from which documents originated is itself covered by Act. US Dept. of Justice v. Tax Analysts, 109 S.Ct. 2841 (1989) p. 2842.

Other Justices may have been targets of this project.

ARGUMENT IV

WHETHER DISCOVERY AND IN CAMERA INSPECTION ARE APPROPRIATE IN THIS CASE?

On page 3 of the Defendant's Reply Memorandum In Support Of Defendant's Motion For Partial Summary Judgment, at the District Court level, the FBI states,

> Plaintiff argues that he is entitled to discovery. However, discovery is generally limited in FOIA

cases. It is permitted only where the agency's declarations fail to establish adequately the scope of an agency's search, its indexing and classification procedures, and similar factual matters.

The Plaintiff believes this case is such a case. The FBI has exempted whole documents, and its Vaughn indicies, classification procedures, and factual statements are in question.

The Plaintiff, further, believes In camera review is appropriate in this case for the above reasons. The Supreme Court has written in regards to In camera review,

> ...that the Court of Appeals properly ordered the agency to produce the case summaries for an in camera inspection of the district court to determine whether their disclosure was proper under exemption granted...Department Of Air Force v. Rose, 425 US 352, 96 S.Ct. 1592 (1976) p. 1593.

So, the Plaintiff, believes the FBI should release all of these documents in unredacted form to the Supreme Court.

ARGUMENT V

WHETHER THE PLAINTIFF CAN RECOVER FEES AND COSTS?

In the initial Complaint, the Plaintiff, requested the District Court award the Plaintiff fees and costs. A Plaintiff is able to recover costs and fees when the suit "...had a substantial causative effect on the delivery of

the information." Church Of Scientology v. US Postal Service, 700 F2d 486(9th Cir. 1983) p. 487. Also, Miller v. United States Dept. Of State, 779 F2d 1378 (8th Cir. 1985) p. 1380. The District Court in its Ruling, of Dec. 4, 1996, (See **APPENDIX-C**) states,

> ...all of the documents ultimately released to the plaintiff were done so before the plaintiff filed this suit. The plaintiff has submitted no evidence to the contrary...p. 22a

This is not exactly right, the initial complaint was filed on Oct. 16, 1995 and the Plaintiff produced letters as Exhibits attached to the Appendix of his brief at the DC Circuit level showing that over 2000 pages were released after the Complaint was filed. Thus, the Plaintiff, believes he has "substantially prevailed" and his suit had a causative effect on the release of information to him and he should be awarded fees and costs.

Accordingly, certiorari is appropriate for the Court to standardize and resolve conflicts between Circuits on these important Freedom of Information Act issues and to review documents held by these agencies about the Supreme Court for In camera review!

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be *granted!*

Respectfully submit

Woody Voinche
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318-253-7788

APPENDICES

APPENDIX-A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOODY VOINCHE
Plaintiff
v.

Civil Action No. 95-01944 (CRR)

FEDERAL BUREAU OF INVESTIGATION
Defendant.

FILED
APR 03 1996
NANCY MAYER-WHITTINGTON,CLERK
US DISTRICT COURT

ORDER

Upon consideration of the defendant's Motion for Further Enlargement of Time on Partial Consent and the plaintiff's Opposition thereto, it is, by the Court, this 3 day of April, 1996,

ORDERED that on or before 4:00 p.m. on April 29, 1996, the defendant shall file its Vaughn declaration for the documents previously released to the plaintiff; and it is

FURTHER ORDERED that the parties shall file cross motions for summary judgment with respect to these documents on or before 4:00 p.m. on May 31, 1996, and any oppositions thereto shall be filed on or before 4:00 p.m. on June 17, 1996; and it is

FURTHER ORDERED that the defendant shall produce to the plaintiff, within thirty days after its receipt of a down payment of $55 and plaintiff's commitment to pay the remaining fee prior to release of the documents, the further documents responsive to his Freedom of Information Act (FOIA) request, subject to the withhold-

ings and redactions that the defendant contends are covered by exemptions to the FOIA; and it is

FURTHER ORDERED that the parties shall appear before the Court at 10:00 a.m. May 31, 1996, for a status conference. At that time, the parties shall be prepared to discuss any and all aspects of the above-captioned case, including the production of a Vaughn declaration for those documents withheld and not addressed by the first Vaughn declaration.

"s/_____"
CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

APPENDIX-B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOODY VOINCHE
Plaintiff,
v.

Civil Action No. 95-01944
(CRR)

FEDERAL BUREAU OF
INVESTIGATION
Defendant.

FILED
SEP 24 1996
NANCY MAYER-WHITTINGTON, CLERK
US DISTRICT COURT

APPEARANCES

FOR THE PLAINTIFF: Woody Voinche, pro se, Marksville, Louisiana.

FOR THE DEFENDANT: Fred E. Haynes, Assistant United States Attorney, with whom Eric H. Holder, Jr., United States Attorney, appeared on the briefs, Washington, D.C.

MEMORANDUM OPINION OF CHARLES R. RICHEY UNITED STATES DISTRICT JUDGE

INTRODUCTION

Before the Court in the above-entitled case are the defendant's Motion for Summary Judgment;[1] the plaintiff's Opposition thereto; and the defendant's Reply. This case arises out the defendant's decision to withhold

1 In its Motion for Summary Judgment, the defendant incorporates its Motion for Partial Summary Judgment, filed June 17, 1996.

entire documents and portions of documents responsive to the plaintiff's Freedom of Information Act ("FOIA"), 5 U.S.C. 552, request seeking material that had been previously released to Alexander Charns and referenced in Mr. Charns' book, Cloak and Gavel.

The defendant has moved for summary judgment on the grounds that it had released all material responsive to the plaintiff's request except information properly withheld pursuant to various exceptions to the FOIA. Upon consideration of the filings by the parties, the entire record herein, the law applicable thereto, and for the reasons set forth below, the defendant's Motion for Summary Judgment shall be granted.

BACKGROUND

On September 23, 1993, the plaintiff sent a letter to the defendant, the Federal Bureau of Investigation ("FBI"), requesting information concerning alleged FBI wiretaps at the United States Supreme Court, "overhears" of conversations Justices had with third parties, former FBI chief, J. Edgar Hoover's official and confidential ("O & C") files, and other surveillance issues. On May 24, 1994, the defendant released 152 pages of documents to the plaintiff relating to the Supreme Court and the judiciary. The defendant, however, withheld documents and redacted material from the pages released to the plaintiff pursuant to FOIA exemptions (b)(1); (b)(2); (b)(3); (b)(6); (b)(7)(C); (b)(7)(D); and (b)(7)(E). See 5 U.S.C.A. 552(b)(1), (2), (3), (6), (7)(C), (7)(D) and (7)(E) (1996). The plaintiff appealed the decision to withhold and redact portions of documents. On October 16, 1995, having received no decision on his appeal, the plaintiff filed the above-entitled action requesting the Court to order the defendant to produce the

withheld records to the plaintiff and to award costs and attorney's fees.

The parties agreed that the defendant would file Vaughn indices[2] explaining the basis for its withholding of documents, the first of which was filed on April 29, 1996. A status conference in the case was held on May 31, 1996, at which time the plaintiff withdrew his request for production the Hoover O & C files, since those documents were available for review at the FBI Headquarters' reading room. Also at that time, the plaintiff stated that he would not contest the defendant's withholdings that were addressed in the declarations of the FBI Special Agents filed on April 29, 1996. The defendant filed further Vaughn indices on June 14, 1996.

On June 17, 1996, the defendant filed a Motion for Partial Summary Judgment.[3] After the nonexempt portions of a final outstanding document -- previously referred to the CIA for review -- were released, the defendant filed a Motion for Summary Judgment on July 1, 1996.

DISCUSSION

I. DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT BECAUSE THE PLAINTIFF HAS NOT RAISED ANY GENUINE ISSUES OF MATERIAL FACT AND THE DEFENDANT PROPERLY ASSERTED FOIA EXEMPTIONS (b) (1), (b)(2), (b) (3), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E) TO JUSTIFY ITS WITHHOLDING OF DOCUMENTS

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2 Vaughn v. Rosen, 484 F.2d 820, 827 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

3 The Motion was for partial summary judgment because the declarations attached to it did not address one document that had been referred by the FBI to the CIA for a response to the plaintiff.

Summary judgment must be granted to the movant if it has shown, when the facts are viewed in the light most favorable to the nonmovant, that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317 (1986). In FOIA cases, the burden of justifying nondisclosure lies with the defendant agency, and summary judgment in its favor is appropriate only where the agency can "prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from (FOIA's) inspection requirements." National Cable Television Ass'n, Inc. v. FCC, 479 F.2d 183, 186 (D.C. Cir. 1973).

The defendant bases its withholding of the records responsive to the plaintiff's FOIA request on Exemptions (b)(1), (b)(2), (b)(3), (b)(6), and (b)(7). When an agency seeks summary judgment on the basis of a FOIA exemption, it can discharge its burden by providing a relatively detailed justification, "specifically identifying the reasons why a particular justification is relevant and correlating those claims with the particular part of a withheld document to which they apply." Mead Data Central, Inc. v. Department of the Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977). The Court may grant summary judgment solely on the basis of affidavits or declarations that explain how requested information falls within a claimed exemption of the affidavits or declarations are sufficiently detailed, nonconclusory, and submitted in good faith. Goland v. CIA, 607 F.2d 339, 352 (D.C. Cir. 1978), cert. denied, 445 U.S. 927 (1980); Military Audit Project v. Casey, 656 F.2d 724, 738 (D.C. Cir. 1981). Still, the Court must review de novo an agency's decision to exempt information. 5 U.S.C.A. 522(a)(4)(B) (1996).

Consistent with the liberal treatment generally afford-

ed pro se litigants, the defendant has provided notice to the plaintiff in its Motion for Summary Judgment that any factual assertions contained in the affidavits and other attachments in support of the Motion will be accepted by the Court as true unless the plaintiff submits his own affidavits or other documentary evidence contradicting such assertions. Defendant's Motion for Summary Judgment at 2; see Neal v. Kelly, 963 F.2d 453, 456 (D.C. Cir. 1992); Local Rule 108; Fed. R. Civ. P. 56(e). Notwithstanding the provision of adequate notice to the plaintiff by the defendant of the operation of the summary judgment rule, the plaintiff's documentary evidence in support of his Opposition to the defendant's Motion fails to contradict many of the factual assertions underlying the various grounds upon which the defendant's Motion rests. Accordingly, the Court must accept as true the uncontroverted allegations.

A. Exemptions (b)(1) was properly asserted.

Exemption (b)(1) protects materials "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and "are in fact properly classified pursuant to such Executive order." 5 U.S.C.A. 552 (b)(1). In this instance, the defendant relies on Executive Order 12,958, which became effective on October 14, 1995, and which governs the classification and protection of: (a) information that would reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States; and (b) inform-

ation that; if revealed, would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States. Exec. Order No. 12,958, 60 Fed. Reg. 19,825 (1995).

Special Agent Richard D. Davidson, a supervisor in the defendant's Document Classification Unit and designated by the U.S. Attorney General as a classification and declassification authority, was given by the defendant the task of reviewing all classified documents responsive to the plaintiff's FOIA request and justifying the withholding of some of those documents based on Exemption (b)(1) through his declaration, filed with this Court on April 29 and June 14, 1996.

In his declarations, special Agent Davidson explains in detail the analysis he applied in determining which documents or portions of documents should be withheld on the basis of Exemption (b)(1). First & Sec. Davidson Decs. qq 3-17. His declarations also state that the information in the documents withheld under Exemption (b)(1) has been properly classified and its release would harm the national interest. Id. at q 6.

The majority of documents withheld in this case under Exemption (b)(1) were classified in their ***entirety*** and, thus, were completely withheld from release. See Sec. Davidson Dec., App. A.

The entries in Special Agent Davidson's Vaughn index relating to these documents are ***vague*** as to the nature of the documents or information withheld. As a result, the indices relating to classified documents do ***not*** provide much ***help*** to the Court in reviewing de novo the defendant's decision to withhold the documents. In his Opposition to the defendant's Motion for Partial Summary Judgment, the plaintiff argues that these index entries are insufficient in that they are "only generalized

theoretical discussion(s) of possible harms which could result from release of information." Plaintiff's Opposition to the FBI's Motion for Partial Summary Judgment; Motion for In Camera Review and to Allow Interrogatories at 1 ("Plaintiff's Opposition") (quoting Wiener v. FBI, 943 F.2d 972, 973-74 (9th Cir. 1991)). The plaintiff questions whether the defendant could have further segregated exempt from nonexempt materials. Plaintiff's Opposition at 2.

In isolation, the Court finds these Vaughn index entries ***troubling***, given the difficulty such entries create for the Court in conducting a de novo review of the defendant's decision to withhold the indexed documents. However, in light of : (1) Special Agent Davidson's thorough declarations; (2) the Department of Justice's Department Review Committee's review of Special Agent Davidson's classification determinations, see Sec. Davidson Dec. q 5; and (3) the defendant's Vaughn index entries relating to nonclassified material withheld from the plaintiff, which unquestionably provide adequate detail for such de novo review; the Court will accept as true Special Agent Davidson's assertion that the defendant provided as much information in its Vaughn index as it could about documents classified in their entirety without compromising national interests. Vaughn declarations filed in FOIA cases involving classified documents inherently require a degree of generalization and such generalization does not violate the FOIA. See, e.g., Maynard v. CIA, 986 F.2d 547, 557 (1st Cir. 1993).

Furthermore, courts generally have deferred to agency expertise in national security matters, see, e.g., Miller v. Casey, 730 F.2d 773, 776 (D.C. Cir. 1984); Taylor v. Department of the Army, 684 F.2d 99, 109 (D.C. Cir. 1982) (classification affidavits are entitled to the "utmost deference"). This Court, too, is reluctant to substitute its

judgment in place of the agency's "unique insights" in areas of national defense and foreign relations. Krikorian v. Department of State, 984 F.2d 461, 464-65 (D.C. Cir. 1993) (acknowledging agency's "unique insights" in areas of national defense and foreign relations). Therefore, in light of the Davidson declarations and the defendant's responsible and thorough preparation of Vaughn indices not involving documents classified in their entirety, the Court concludes that the defendant's invocation of exemption (b)(1) was proper, despite the ***vague descriptions*** in certain Vaughn index entries.

B. The Defendant Properly Asserted Exemption (b)(2)

Exemption (b)(2) protects information "related soley to the internal personnel rules and practices of an agency." 5 U.S.C.A. 552(b)(2). To fall within exemption (b)(2), the material withheld must be "predominantly internal" and its disclosure "significantly risk circumvention of agency regulations or statutes." Crooker v. Bureau of Alcohol, Tobacco & Firearms, 670 F.2d 1051, 1073-74 (1981). Under the Crooker test, whether there is any public interest in disclosure is irrelevant. See Kaganove v. EPA, 856 F.2d 884, 888-89 (7th Cir. 1988), cert. denied, 448 U.S. 1011 (1989); Institute for Policy Studies v. Department of the Air Force, 676 F. Supp. 3, 5 (D.D.C. 1987). This is because the concern in such cases is that a FOIA disclosure should not "benefit those attempting to violate the law and avoid detection." Crooker, 670 F.2d at 1053.

In this case, the defendant asserted Exemption (b)(2) for permanent confidential source symbol numbers, file numbers, and certain manuals containing detailed dis-

cussions regarding techniques used by professional gamblers to evade prosecution. First Kelso Dec. qq 33-36; Sec. Kelso Dec. qq 33-38. In addition, the FBI withheld information relating to the security of the Supreme Court building and the security procedures for Supreme Court Justices. Id. at q 39.

The Court has reviewed the declarations of Special Agent John M. Kelso, Jr. and the Vaughn indices prepared by him. Finding that Special Agent Kelso adequately explained the processes by which he reviewed documents for responsiveness and determined which material should be withheld under Exemption (b)(2), and satisfied with the information about the withheld material provided in the aforementioned Vaughn, the Court finds that the defendant properly asserted Exemption (b)(2).

C. The Defendant Properly Asserted Exemption (b)(3).

Exemption (b)(3) allows for the withholding of information specifically exempted from disclosure by statute, provided the statute (a) requires matters to be withheld from the public in such a manner as to leave no discretion on the issue, or (b) establishes particular criteria for withholding or refers to particular types of matters to be withheld. 5 U.S.C.A. 552(b)(3).

The defendant withheld the name of an individual subpoenaed to appear before the Grand Jury, along with the time, place and the particular case. First Kelso Dec. qq 38-39. The defendant argues that releasing this information would violate the secrecy of the Grand Jury proceedings and reveal the scope and directions of the proceedings. Id. at q 38.

The Court agrees. Rule 6(e) of the Federal Rules of Criminal Procedure prohibits the disclosure of matters which occur before Grand Juries, except under narrow

circumstances inapplicable here. F. R. Crim. P. 6(e). Accordingly, the Court finds that the defendant properly exempted the information relating to a Grand Jury proceeding from disclosure pursuant to the FOIA.

D. The Defendant Properly Asserted Exemption (b)(6).

Under FOIA Exemption (b)(6), material may be withheld which "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C.A. 552(b)(6). The Court finds that Exemption (b)(6) was correctly asserted to protect the names and identifying information with regard to individuals and that summary judgment in favor of the defendant on this claim is appropriate.

Here, the defendant invoked Exemption (b)(6) to withhold information, including: (1) the names and initials of Special Agents and support employees; (2) the names and addresses of individuals who wrote to J. Edgar Hoover, to Justices of the Supreme Court, or to members of Congress expressing their views on some of the Supreme Court's decisions or on particular Justices; the names and identifying data of individuals mentioned during the course of routine day-to-day matters with the FBI; (4) the names and titles of Supreme Court employees and applicants; (5) the names of non-federal law enforcement officers; (6) the names of non-FBI federal government employees; (7) and the names and identifying data of possible candidates for vacancies on the Supreme Court. First & Sec. Kelso Decs. qq 40-49.

To warrant protection under Exemption (b)(6), information must, as a threshold matter, be contained within "personnel and medical files and similar files." 5 U.S.C. A. 552(b)(6). As the Supreme Court noted in Department of State v. Washington Post Co., 456 U.S. 595

(1982), the protection of an individual's privacy interests "surely was not intended to turn upon the label of the file which contains the damaging information." Id. at 601 (citing H.R. Rep. No. 1497, 89th Cong., 2d Sess. 11 (1966)). It held, rather, that all information which "applies to a particular individual" meets the threshold requirement for Exemption (b)(6) protection. Id. at 602. The defendant asserts Exemption (b)(6) to protect the names and identitying data of specific individuals, and, thus, has met the threshold requirement.

The defendant also must establish that the disclosure of the records at issue "would constitute a clearly unwarranted invasion of personal privacy," which requires a balancing of the public's right to disclosure against the individual's right to privacy. See Department of the Air Force v. Rose, 425 U.S. 352, 372 (1976). Because the release of the names and identifying features of individuals withheld would serve no articulable public interest, the Court finds that the defendant's assertion of Exemption (b)(6) in order to protect the privacy interests of the individuals at issue was correct.

The Supreme Court has sharply limited the concept of "public interest" under the FOIA to the core purpose for which it was enacted: to "shed () light on an agency's performance of its statutory duties." Department of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989).[4] Information that does not directly

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[4] On September 17, 1996, both houses of Congress passed a bill that amends the FOIA to effectively overrule the U.S. Supreme Court's holding in Reporters Comm. The amendment clarifies that "the information collected by federal agencies is subject to release for any public or private purpose, as long as it does not conflict with the existing exemptions." Ira Chinoy, Amendment Seeks to Open Public Files to Digital Diggers, Washington Post, September 18, 1996 at A17; see Electronic Freedom of

reveal the operation or activities of the federal government "falls outside the ambit of the public interest that the FOIA was enacted to serve." id. at 775; see Andrews v. Department of Justice, Civ. No. 89-2111c-6, slip op. at 5-6 (E.D. Mo. July 17, 1991) ("[T]he nature of the public interest inquiry under the FOIA...turns on the relationship of the information to the basic purpose of the FOIA, which is 'to open agency action to the light of public scrutiny.'") (quoting Reporters Comm., 489 U.S. at 772) (quoting Rose, 425 U.S. at 372)).

The information withheld in this case under Exemption (b)(6) consists entirely of names and identifying data of individuals. See First & Sec. Kelso Decs. qq 40-49. There is no reason to believe that the public will obtain a better understanding of the workings of various agencies by learning the identities of FBI Special Agents and support personnel, private citizens who wrote to government officials, non-federal law enforcement officers, non-FBI federal employees or candidates for vacancies on the U.S. Supreme Court. Accordingly, in light of the countervailing privacy interests of third parties about whom personal information is contained in the requested records, the Court finds that the defendant properly asserted Exemption (b)(6). The Court therefore shall grant the defendant's Motion for Summary Judgment with regard to their assertion of Exemption (b)(6) to withhold requested information.

E. The Defendant Properly Asserted Exemption (b)(7).

Information Act Amendments of 1996, H.R. 3802, 104th Cong., 2d Sess. (1996). The President had not signed the bill into law as of the date of this Memorandum Opinion.

The defendant also withholds certain information from release to the plaintiff under three subsections of Exemption (b)(7) of the FOIA. Exemption (b)(7) protects "investigatory records compiled for law enforcement purposes," but is limited to those records the production of which would cause one of a variety of enumerated harms. 5 U.S.C.A. 552 (b)(7).

1. Exemption (b)(7)(C).

Exemption (b)(7)(C) provides protection from disclosure to investigatory material when such disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C.A. 552(b)(7)(C) (1996) "It is generally recognized that the mention of an individual's name in a law enforcement file will engender comment and speculation and carries a stigmatizing connotation." Branch v. FBI, 658 F. Supp. 204, 209 (D.D.C. 1987); see also Lesar v. Department of Justice, 636 F.2d 472, 488 (D.C. Cir. 1980). As such, the Court is required to balance the personal privacy interests of the named individuals with the interest of the public in the disclosure of such information. Reporters Comm., 489 U.S. at 762; Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

In this case, the defendant asserts that information in investigatory material has been withheld from the plaintiff under Exemption (b)(7)(C) because it consists of : (1) the names and initials of Special Agents and support personnel of the FBI; (2) the names and identifying data of third parties of investigative interest; (3) the names and identifying data of non-FBI federal government employees; (4) the names of employees of the Supreme Court who provided information in connection with their employment; (5) the names and identifying data of third parties mentioned during the course of interviews or contacts

with third parties and toward whom no investigative effort was directed; (6) the name and title of an individual who, by reason of his employment, was in a position to furnish information concerning the investigation of the alleged attempt to sell advance opinions of the U.S. Supreme Court; (7) the names and identifying data of third parties interviewed about then-Governor Earl Warren and some of his associates; and (8) the names and identifying data of an individual who corresponded with the FBI regarding Justice Warren. The nature of the withholdings under Exemption (b)(7)(C) and the privacy interests at stake are explained in detail in the April 29 and June 14, 1996 declarations of Special Agent John D. Kelso, Jr. First Kelso Dec. qq 51-69; Second Kelso Dec. qq 51 to 67.

Exemption (b)(7)(C) is designed to protect not only against the danger of physical harm but also against those invasions of personal privacy likely to be associated with the stigma frequently attached to law enforcement proceedings and investigations. Given the strong privacy interest inherent in law enforcement records, and the absence of a "significant and compelling" public interest in disclosing the names of individuals associated with, or the focus of, FBI investigations referenced in the withheld material, the Court finds that the defendant properly asserted Exemption (b)(7)(C). See SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1206 (D.C. Cir. 1991) ("We now hold categorically that, unless access to the names and addresses of private individuals appearing in files within the ambit of Exemption 7(C) is necessary in order to confirm or refute compelling evidence that the **agency is engaged in illegal activity**, such information is exempt from disclosure.") Satisfied with the declarations of Special Agent Kelso and the Vaughn indices as they relate to information withheld pursuant to Exemption (b)(7)(C), the Court shall grant the defend-

ant summary judgment with respect to its assertion of that exemption to the FOIA.

2. Exemption (b)(7)(D).

Exemption (b)(7)(D) is designed to provide protection for investigatory material which "could reasonably be expected to disclose the identity of a confidential source, ...or...information furnished by a confidential source." 5 U.S.C.A. 552 (b)(7)(D). Exemption (b)(7)(D) has long been recognized as affording the most comprehensive protection of all of the FOIA's law enforcement exemptions . See Irons v. FBI, 880 F.2d 1446, 1452 (1st Cir. 1989) (en banc). Not all information received from sources in the course of criminal investigations, however, is entitled to a presumption of confidentiality. United States Department of Justice v. Landano, 508 U.S. 165 (1993). In Landano, the U.S. Supreme Court ruled that source confidentiality must be determined on a case-by-case basis, recognizing that it may be true that most individual sources will expect confidentiality. See id. at 176. Thus, under Landano, the government must show either that a source received express assurances of confidentiality or that circumstances existed from which an inference of confidentiality can be assumed.

Applying the analysis of Landano to the information withheld in this case pursuant to Exemption (b)(7)(D), the Court finds that the defendant adequately showed that each individual whose name or identifying data was withheld received an express or implied assurance of confidentiality.[5] First Kelso Dec qq 73-82; Sec. Kelso

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[5] In fact, the name and identifying data of only one individual--a person with whom Justice William O. Douglas associ-

Dec. qq 71-88. Accordingly, the Court shall grant the defendant's Motion for Summary Judgment with regard to their withholding of information relating to the identity of sources given a promise of confidentiality.

3. Exemption (b)(7)(E).

Exemption (b)(7)(E) provides for the withholding of investigatory records compiled for law enforcement purposes, the disclosure of which would reveal "techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U. S.C.A. 552(b)(7)(E). The defendant has invoked this exemption to withhold copies of the "Criminal Intelligence Digest," a publication prepared to render assistance and guidance to FBI personnel, and information relating to an analysis of safety procedures afforded to the Supreme Court and its Justices. Sec. Kelso Dec. qq 89-90.

The defendant also invoked Exemption (b)(2) as a basis for withholding this material, which the Court, supra I.B., found an appropriate action. Nonetheless, for the same reasons the materials may be withheld under Exemption (b)(2), the Court finds that the materials also should be afforded protection from disclosure pursuant to Exemption (b)(7)(E).

CONCLUSION

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ated--was withheld based on an implied promise of confidentiality. Sec. Kelso Dec. qq 79-83. The defendant has provided sufficient detail of the circumstances around the individual's interaction with the FBI to establish that the individual at issue had an expectation of confidentiality as to his or her relationship with the FBI, even though the promise of confidentiality was not explicitly expressed.

Upon consideration of the defendant's Motion For Summary Judgment, which incorporates by reference its earlier Motion for Partial Summary Judgment, the plaintiff's Opposition thereto, the defendant's Reply thereto, the declarations of Special Agents Davidson and Kelso and accompanying Vaughn indices, and for all of the foregoing reasons, the Court finds that the defendant is entitled to judgment in its favor as a matter of law.[6] As such, the Court shall issue an Order of even date herewith consistent with the foregoing Memorandum Opinion.

"s/ _____"
Charles R. Richey
UNITED STATES DISTRICT JUDGE

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[6] Because the Court finds that the defendant is entitled to judgment as a matter of law based on the Vaughn indices provided, the Court rejects the plaintiff's argument in his Opposition that discovery and in camera review of the documents is necessary to a proper resolution of this matter. Accordingly, the Court declares moot in its Order of even date herewith the plaintiff's motions for such relief.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOODY VOINCHE
Plaintiff,

Civil Action No. 95-01944 (CRR)

v.

FEDERAL BUREAU OF INVESTIGATION,
Defendant.

FILED
SEP 24 1996
NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

For the reasons articulated in the Court's Memorandum Opinion of even date herewith, it is, by the Court, this 23 day of September, 1996,

ORDERED that the defendant's Motion for Summary Judgment shall be, and hereby is, GRANTED; and it is

FURTHER ORDERED that any and all other outstanding motions shall be, and hereby are, rendered and declared Moot; and, it is

FURTHER ORDERED that the above-captioned case shall be, and hereby is, DISMISSED from the dockets of this Court.

"s/ _____"
CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

APPENDIX-C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOODY VOINCHE,
Plaintiff,

Civil Action No. 95-01944 (CRR)

v.

FEDERAL BUREAU OF INVESTIGATION,
Defendant.

FILED
DEC 04 1996
NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

Before the Court in the above-captioned matter is the Plaintiff's Motion for Fees and Costs. The plaintiff asserts therein that he is entitled to Fees and Costs pursuant to the Freedom of Information Act (the "FOIA"), 5 U.S.C. 552(a)(4)(E), because he has "substantially prevailed" in his litigation in that the action he filed had a "causative effect" on the delivery of information to him. See Miller v. United States Department of State, 779 F.2d 1378, 1389 (8th Cir. 1986)(stating that plaintiff who has not received favorable judgment can still be awarded attorney's fees and costs if he shows that "prosecution of the action could reasonably be regarded as necessary to obtain the information, and, second, that the existence of the lawsuit had a causative effect on the release of the information").

Pursuant to the FOIA, 5 U.S.C. 552(a)(4)(E), the court "may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case...in which the complainant has substantially prevailed." See e.g., Jaffe v. CIA, 573 F. Supp.

377 (D.D.C. 1983). A claimant need not have received a favorable judgment in order to have "substantially prevailed." If the prosecution of the action could reasonably be regarded as necessary to obtain the information and the existence of the lawsuit has a causative effect on the release of the information. the plaintiff has substantially prevailed and may be awarded attorney's fees and costs. Miller, 779 F.2d at 1389; Crooker v. United States Parole Commission, 776 F.2d 366, 367 (1st Cir. 1985).

In this case, the Court awarded summary judgment in favor of the defendant on September 24, 1996. Further, all of the documents ultimately released to the plaintiff were done so before the plaintiff filed this suit. The plaintiff has submitted no evidence to the contrary. Therefore, based on its review of the entire record herein, the Court finds that the plaintiff's action had no causative effect on the release of material responsive to the plaintiff's FOIA request, and, thus, the plaintiff did not substantially prevail in this action.

Accordingly, it is, by the Court, this 4th day of December, 1996.

ORDERED that the plaintiff's Motion for Fees and Costs shall be, and hereby is, DENIED.

"s/ _____"
CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

APPENDIX-D

Bills of cost must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 96-5304 **September Term, 1996**
95cv01944

Woody Voinche,
Appellant

v.

Federal Bureau of Investigation,
Appellee

United States Court of Appeals
For the District of Columbia Circuit
FILED Jun 19 1997

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Williams, Ginsburg, and Rogers, *Circuit Judges*

JUDGMENT

This appeal was considered on the record from the United States Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for an opinion. See D.C. Cir. Rule 36(b). It is

ORDERED and **ADJUDGED** that the orders of the district court filed September 24, 1996 and December 4, 1996, be affirmed for the reasons stated in the accom-

panying memorandum.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

Per Curiam

No. 96-5304-Woody Voinche v. Federal Bureau of Investigation

MEMORANDUM

The Second Declaration of Richard D. Davidson and the accompanying document descriptions satisfy appellee's burden of demonstrating that it followed proper classification procedures and that the withheld information logically falls within the scope of exemption 1 under the Freedom of Information Act ("FOIA"). See 5 U.S.C. 552(b)(1); Hayden v. National Security Agency/Central Security Service, 608 F.2d 1381, 1384-87 (D.C. Cir. 1979), cert. denied, 446 U.S. 937 (1980). Accordingly, *in camera* review of the documents was neither necessary nor appropriate. The district court did not err in according substantial deference to appellee's determination as to the classified status of withheld material and whether disclosure would harm the national security interest. See Oglesby v. U.S. Dept. of Army, 79 F.3d 1172, 1178 (D.C. Cir. 1996); Krikorian v. Dept. of State, 984 F.2d 461, 464 (D.C. Cir. 1993); Miller v. Casey, 730 F.2d 773 (D.C. Cir. 1984); Hayden, 608 F.2d at 1384.

The Second Declaration of John M. Kelso and the accompanying exhibits do not constitute an impermissible coded format. The declaration and exhibits provide sufficient information for the court to review appellee's

decision to withhold certain materials. See Keys v. U.S. Dept. of Justice, 830 F.2d 337, 349-50 (D.C. Cir. 1987); King v. Dept. of Justice, 830 F.2d 210, 232-33 (D.C. Cir. 1987). There is no discrepancy in the record. The fact that records may have been maintained with respect to "overhears" of or about Justice Douglas does not mean that Justice Douglas was himself a target.

No. 96-5304-Woody Voinche v. Federal Bureau of Investigation

Appellee's decision to treat appellant's request for "Document No. 105-69845-18139 Hunter Report 4946 FBI-CIA mail opening" as a request for a particular document was not unreasonable. Appellee was not required to search for records beyond the scope of the request. See Kowalczyk v. Dept. of Justice, 73 F.3d 386, 388-89 (D.C. Cir. 1996).

Finally, the district court did not err in denying appellant's motion for fees and costs. The fact that appellee released additional documents subsequent to the filing of the complaint in this matter does not, standing alone, demonstrate that appellant substantially prevailed in the litigation. See 5 U.S.C. 552(a)(4)(E); Maynard v. CIA, 986 F.2d 547, 568 (1st Cir. 1993); Cox v. U.S. Dept. of Justice, 601 F.2d 1, 6 (D.C. Cir. 1979) (per curiam).

APPENDIX-E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOODY VOINCHE,
Plaintiff

CIVIL ACTION NO. 95-01944 (CRR)

v.

FEDERAL BUREAU OF INVESTIGATION,
Defendant.

SECOND DECLARATION OF JOHN M. KELSO, JR.

I, John M. Kelso, Jr., hereby declare as follows:

(1) I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information-Privacy Acts (FOIPA) Section, Information Resources Division, FBI Headquarters (FBIHQ), Washington, D.C.

(2) Due to the nature of my official duties, I am familiar with the procedures followed in responding to requests for information received by the FBI pursuant to Title 5, United States Code (U.S.C.), Section 552, commonly known as the Freedom of Information Act (FOIA).

(3) All information contained herein is based upon information provided to me in my official capacity.

(4) The purpose of this declaration is to: a) identify the remaining material requested and identified by plaintiff and; b) justify the use of the FOIA exemptions asserted by the FBI in withholding material from plaintiff.

(5) This declaration consists of: (I) correspondence relevant to plaintiff's request; (II) identification of documents responsive to plaintiff's request; (III) an explan-

ation of the format utilized for justification of deleted material; and (IV) an explanation of justification categories.

I. **CORRESPONDENCE RELEVANT TO PLAINTIFF'S REQUEST**

(6) The following is a descriptive chronology of correspondence relevant to plaintiff's FOIA request. True copies are attached as Exhibit I, A through I.

(A) March 20, 1996 letter from FBIHQ to plaintiff advising of the duplication costs of processed documents regarding William O. Douglas.

(B) April 9, 1996 memo from Fred E. Haynes, Department of Justice (DOJ), Executive Office of the United States Attorney (EOUSA) enclosing a $100 deposit check from plaintiff.

(C) April 30, 1996 letter from FBIHQ to plaintiff releasing 948 pages from FBI file 62-27585 subject to withholdings made pursuant to FOIA exemptions (b)(1), (b)(2), (b)(6), (b)(7)(C) and (b)(7)(D). Acknowledgement of plaintiff's $100 deposit check was made with notification that an additional 1,315 pages were available from file 62-27585 for the additional cost of $131.50.

(D) May 6, 1996 letter from plaintiff to Fred E. Haynes, DOJ, EOUSA, enclosing a check for $175 to cover duplication costs for the documents concerning William O. Douglas and the remaining documents in file 62-27585.

(E) May 9, 1996 letter from FBIHQ to plaintiff advising that one file concerning William O. Douglas was inadvertently overlooked and was available at an additional cost.

(F) May 9, 1996 letter from FBIHQ to plaintiff advising that 4,883 pages concerning specifically requested documents in Hoover's Official and Confidential (O&C) file were available at the cost of

$488.30 or could be reviewed in the FOIPA Reading Room at FBIHQ at no charge.

(G) May 17, 1996 letter from FBIHQ to plaintiff releasing 1,315 pages from FBI file 62-27585 subject to withholdings made pursuant to FOIA exemptions (b)(2), (b)(6), (b)(7)(C), (b)(7)(D) and (b)(7)(E).

(H) May 23, 1996 letter from FBIHQ to plaintiff releasing 343 pages concerning William O. Douglas subject to withholdings made pursuant to FOIA exemptions (b)(1), (b)(2), (b)(7)(C) and (b)(7)(D).

(I) June 10, 1996 letter from FBIHQ to plaintiff releasing five pages subject to withholdings made pursuant to FOIA exemptions (b)(1) and (b)(7)(C). The release of this material was made following discussions with plaintiff concerning specific aspects of his FOIA request and to reflect the current processing of plaintiff's Exhibit E-1 document filed with the Court with plaintiff's May 15, 1996 motion. It should be noted that the E-1 document was not included in plaintiff's September 9, 1993 request letter.

II. IDENTIFICATION OF DOCUMENTS RESPONSIVE TO PLAINTIFF'S REQUEST

(7) Plaintiff's request letter designated selected documents which were previously released to Alexander Charns, another FOIA requester, which was set out in my first declaration executed on April 26, 1996 at paragraph 7.

(8) This declaration deals with: (1) specific requested material from the J. Edgar Hoover's O&C file; (2) plaintiff's Exhibit E-1; (3) documents concerning William O. Douglas and (4) FBI file 62-27585.

HOOVER'S O & C FILE

(9) Plaintiff requested documents contained within the

O & C files, specifically the technical surveillance folders on Thomas Corcoran, Edward Pritchard and Drew Pearson. The O & C files are collectively designated as file number 62-116606, which consists of materials dated from the 1920's to 1972 and are comprised of approximately 18,000 pages. The O & C files are maintained in 164 individual parts (folders) and are, for the purposes of records management, numbered 1 through 164. Each folder is labeled according to the topic of its own distinct subject matter.

(10) The documents requested by plaintiff are available for review in the FOIAPA Reading Room with no excisions. Plaintiff reviewed material in the Reading Room on May 29 and 30, 1996 and has indicated that these documents are no longer an issue in this litigation.

EXHIBIT E-1

(11) This document is titled "Electronic Surveillance checks on Supreme Court Justices" and was initially released to plaintiff in 1992. The document indicated that a search of the electronic surveillance indices **failed to show** that any of the Justices' had been the subject of electronic surveillance although several had been overheard on surveillances on other individuals or organizations. Redactions were made to protect the name and initials of FBI employees, personal information concerning the Justices' and information which is classified. This document is attached as Exhibit II.

WILLIAM O. DOUGLAS

(12) The documents requested concerning former Supreme Court Justice Douglas are contained within seven files or categories/groups of files and are attached collectively as Exhibit III.

(13) The first group of documents are contained in FBIHQ file 94-33476 which is captioned "Research Matters" and contains a variety of general information concerning subject Douglas. Seven documents were requested from this file. Redactions have been made in these documents to protect the initials of FBI employees, the privacy of third parties whose names were mentioned as associates or acquaintances of Douglas, names and identifying data of individuals who were of investigative interest and/or subjects of FBI investigations and the names and identifying data of individuals who gave information to the FBI during the course of an investigation/ inquiry as well as the information provided by them.

(14) The second group of documents are contained within FBIHQ file 139-4370, an investigatory file the subject of which is "Interception of Communication". This file, which concerns the possible interception of telephone calls by Associate Justice William O. Douglas, consists of 13 documents and contains information redacted to protect the names and initials of FBI employees, the identities of third parties whose names were received during the investigation and the names of institutional employees interviewed because of their employment. Information was also redacted to protect information provided by both third party employees of institutions and third parties identified during the course of the investigation.

(15) The third group of documents are contained within FBIHQ file 101-2983. This is an "Internal Security" file from which the plaintiff requested five serials. Redactions were made in this to protect the names and initials of FBI employees, the identities of third parties providing information to the FBI on a confidential basis and the information provided by them as well as the names and identifying information regarding third parties

who made allegations against Justice Douglas. Information was also redacted to protect national security information.

(16) The fourth group of documents is Hunter Report number 4946 which is maintained in FBIHQ file 105-67845. The Hunter Report was a Central Intelligence Agency (CIA) mail intercept program. The CIA opened and copied letters to and from the Soviet Union between 1956 and 1973. Plaintiff requested one serial from this file and it has been referred to the CIA for direct response to plaintiff.

(17) The fifth group of documents are the Electronic Surveillance (Elsur) records **maintained on Douglas** at the New York Field Office. A reference which is a two page Elsur log is contained in a 100 classification file captioned "Domestic Security". The information within this document is classified in its entirety to protect national security information. The name and initials of FBI employees have also been protected.

(18) The sixth group of documents are references from the Washington Metropolitan Field Office (WMFO). These references consist of Elsur logs taken from 105 classification files captioned "Foreign Counterintelligence". Information has been redacted to protect the privacy of third parties, source symbol numbers used to identify the source of these logs and national security information.

(19) The seventh group of documents are also from WMFO and consist of Elsur logs which were extracted from 65 and 100 classification files captioned "Foreign Counterintelligence" and "Domestic Security" investigations, respectively . Information has been redacted to protect the names and initials of FBI employees and national security information.

FBI FILE 62-27585

(20) This file is a 15 volume miscellaneous file consisting of a collection of administrative, personnel and investigative matters which concern the Supreme Court and is attached as Exhibit IV.

(21) For example, the file contains many letters from private citizens expressing their views regarding certain Supreme Court decisions and the Justices, copies of Supreme Court decisions and analyses of the decisions made by FBI officials .....

APPENDIX-F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOODY VOINCHE
Plaintiff,

v. CIVIL ACTION NO. 95-01944(CRR)

FEDERAL BUREAU OF INVESTIGATION,
Defendant.

FOURTH DECLARATION OF JOHN M. KELSO, JR.

I, John M. Kelso, Jr., hereby declare as follows:

(1) I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information-Privacy Acts (FOIPA) Section, Information Resources Division, FBI Headquarters (FBIHQ), Washington, D.C.

(2) Due to the nature of my official duties, I am familiar with the procedures followed in responding to requests for information received by the FBI pursuant to Title 5, United States Code (U.S.C.), Section 552, commonly known as the Freedom of Information Act (FOIA).

(3) All information contained herein is based upon information provided to me in my official capacity.

(4) The purpose of this declaration is to provide the Court with clarification and responses to plaintiff's Opposition to the FBI's Motion for Partial Summary Judgement dated June 26, 1996. This declaration incorporates and supplements my previous declarations filed in this matter.

EXHIBIT 1
C.A. No. 95-1944 CRR

(5) In regard to former Supreme Court Justice William O. Douglas and electronic surveillance, former Justice Douglas was never the target of any electronic surveillance, although, his name was mentioned or his voice **was overheard** and made a *matter of record* in monitored conversations of other individuals.

(6) Plaintiff makes reference to "eleven pages of classified electronic surveillance records from the Washington Metropolitan Field Office" as set forth in FBI letter dated May 24, 1994. For the information of the Court, these seven documents, consisting of eleven pages, are included in my second declaration (Kelso II) at paragraphs 18 and 19 which concern Electronic Surveillance material and can be found at Exhibit III document numbers 37, 45, 60, 61, 66, 67 and 108.

(7) The documents referenced in Kelso II, at paragraphs 13 through 19 and attached as Exhibit III, parts 1 through 7 of this declaration, do not match up chronologically. Below is a listing of Exhibit III and part numbers with the corresponding paragraph number as references in Kelso II:

Exhibit III, Part 1	Paragraph 13
Exhibit III, Part 2	Paragraph 15
Exhibit III, Part 3	Paragraph 14
Exhibit III, Part 4	Paragraph 18
Exhibit III, Part 5	Paragraph 19
Exhibit III, Part 6	Paragraph 17
Exhibit III, Part 7	Paragraph 16

(8) Appendix A to the Second declaration of Special Agent Richard D. Davidson lists and justifies the 161 documents containing information exempt from release pursuant to the (b)(1) exemption. Although these write-ups do not correspond to the paragraphs contained in Kelso II, each document justification clearly identifies the

corresponding Exhibit and document number assigned to each.

(9) Plaintiff conjectures that the excised information in an FBI letter to the Honorable Henry A. Kissinger dated June 25, 1969 (plaintiff's Exhibit SJ-4 which is identified as Exhibit III, Document 7 Kelso II), deals with the so-called "17 Kissinger wiretaps". These wiretaps were ordered by the White House in mid-1969 and were terminated in February 1971. The stated purpose was to locate the source of leaks of secret information concerning foreign policy initiatives by President Richard M. Nixon and his administration. Review of the excised information reveals that it does not relate to or contain information from the "17 Kissinger wiretaps", but does contain national security information which references former Justice Douglas.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 1st day of July, 1996.

"s/ _____"
John M. Kelso, Jr.
Special Agent
Federal Bureau of Investigation
Washington, D.C.

APPENDIX-G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOODY VOINCHE,
Plaintiff,

Civ. No. 95-1944 CRR

v.

FEDERAL BUREAU OF INVESTIGATION,
Defendant.

DECLARATION OF WILLIAM H. McNAIR

I, WILLIAM H. McNAIR, hereby declare and state:

1. I am the Information Review Officer (IRO) for the Directorate of Operations (DO) of the United States Central Intelligence Agency. I have held operational and executive positions in intelligence agencies of the United States Government since 1962 and with the CIA since 1982. I was appointed to my present position in February 1994. As IRO for the DO, I am responsible for the review of documents containing information originated by the DO, or otherwise implicating DO interests, that become the subject of litigation. The statements made herein are based upon my personal knowledge, upon information made available to me in my official capacity, upon advise and counsel of the Office of General Counsel, and upon conclusions reached and determinations made in accordance herewith.

2. Through the exercise of my official duties, I have become familiar with the Plaintiff's Freedom of Information Act (FOIA) requests to the Federal Bureau of Investigation (FBI) which have resulted in this civil litigation case.

3. The purpose of this declaration is to respond to the Court's 18 June 1996 order that the CIA file a supporting Vaughn v. Rosen declaration in this matter. This declaration addresses CIA originated information contained within an FBI document. This declaration explains why certain information is being denied.

4. As DO/IRO, I am responsible for ensuring that the exemption determinations set forth in this declaration are proper. After carefully reviewing the document in question, I personally have made the following determination.

FBI Document No. 05-67895-18139. This document consists of five pages.

a) Page 1, a routing memorandum from James Angleton, (for) Deputy Director for Plans, CIA, to the Director of the FBI, "Subject: HUNTER Report # 4946", dated 21 March 1966, was formerly classified SECRET but is now unclassified and is being released with no CIA redactions.

b) Page 2, the memorandum handling instructions entitled "HUNTER PROJECT", was formerly classified CONFIDENTIAL but is now unclassified and is being released with no CIA redactions.

c) Pages 3-5, copies of the outer envelope and the enclosed 3-page handwritten personal letter mailed 3 March 1966 from a foreign national to Justice and Mrs. William O. Douglas, are denied in their entirety under 5 U.S.C. 552(b)(6). The disclosure of these three pages would clearly constitute an unwarranted invasion of personal privacy of the author of this personal letter.

5. The personal letter from a foreign national to Justice and Mrs. William O. Douglas was obtained by the CIA in 1966 through a clandestine mail-opening program called HTLINGUAL. From 1956 to 1973, the HTLINGUAL program clandestinely intercepted, opened, copied and returned undetected to postal channels, cor-

respondence mailed between New York City, New York and the Union of Soviet Socialist Republics. CIA shared the collected information with the FBI, whose name for the program was the HUNTER PROGRAM. The HTLINGUAL/HUNTER program was discontinued and publicly disclosed during the post-Watergate congressional investigations of the CIA. Details of the program can be found in Chapter 9 of the report of the Rockefeller Commission (Commission of CIA Activities within the United States).

6. The three pages withheld by CIA are a personal letter whose contents were intended by the author to be known only by the addressees, Justice and Mrs. William O. Douglas. The letter does not relate to the official duties of Justice Douglas. Whatever public interest there may be in the contents of the letter is clearly outweighed by the privacy interest of the author, who never intended public disclosure of the personal letter. Disclosure of the letter would clearly constitute an unwarranted invasion of personal privacy of the author.

7. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th of June, 1996.

"s/ _____"
WILLIAM H. McNAIR

APPENDIX-H

DESCRIPTION OF DOCUMENT CONTAINING NATIONAL SECURITY INFORMATION

Appendix: A
File Number: Classified
Document: 36 Exhibit 3
Date of Document: Classified
Total Number of Pages: 1(pertinent to the request)
Total Number of Pages containing National Security Information: 1
Description of Document: Classified

This document is classified in its entirety.

The withheld information contains detailed information that would identify an intelligence source or method utilized to provide information on a specific individual or organization of national security interest. This information also pertains to a specific government.

Disclosure of this information could reasonably be expected to cause serious damage to the national security, as it would reveal information about the application of an intelligence source or method and seriously and demonstrably impair relations between the United States and a foreign government. This information is exempted from automatic declassification pursuant to EO 12958, Section 3.4 (b)(1) and (b)(6). See paragraphs 7 through 14, supra.

DESCRIPTION OF DOCUMENT CONTAINING NATIONAL SECURITY INFORMATION

Appendix: A
File Number: Classified
Document: 86 Exhibit 3
Date of Document: Classified
Total Number of Pages: 2 (pertinent to the request)
Total Number of Pages containing National Security Information: 2
Description of Document: Classified

This document is classified in its entirety

The withheld information contains detailed information that would identify an intelligence source or method utilized to provide information on a specific individual or organization of national security interest. This information also pertains to a specific government.

Disclosure of this information could reasonably be expected to cause serious damage to the national security, as it would reveal information about the application of an intelligence source or method and seriously and demonstrably impair relations between the United States and a foreign government. This information is exempted from automatic declassification pursuant to EO 12958, Section 3.4 (b)(1) and (b)(6). See paragraphs 7 through 14, supra.

APPENDIX-I

EXHIBIT SJ-1

UNITED STATES GOVERNMENT

MEMORANDUM

1-Mr. Cleveland
(Attn: Mr. Keith)
1-Mr. E.S. Miller

TO : Mr. E.S. Miller

FROM : CLASSIFIED ——FINALIZED BY DEPARTMENT REVIEW COMMITTEE

10/10/73
1-Mr. T.J. Smith
1-Mr.XXXXXXX

SUBJECT: ELECTRONIC SURVEILLANCE CHECKS ON SUPREME COURT JUSTICES XXXXXXX

Reference is made to the blind undated memorandum (attached) captioned "Private Telephone Numbers of Supreme Court Justices" furnished to Associate Director Callahan on 10/11/73 by Mr. J. T. Smith, Executive Assistant to the Attorney General with the verbal request that we determine whether any of the Justices had been the subjects of electronic surveillances. This memorandum bears the initials of the Attorney General and the notation J.T. please report to me on this, E.L.R., 10-8.

The names of the Justices have been searched through the electronic surveillance indices in the Special Investigative Division as well as through the special electronic surveillance indices of the Intelligence Division. This review fails to show that any of the Justices have been the subject of electronic surveillances. As far as was possible, the numbers listed for both residence, office and summer residence were checked in the special electronic surveillance indices in the Intelligence Division. No such review is possible in the indices maintained in the Special Investigative Division as their indices are maintained only alphabetically.

While this review failed to indicate that these individuals were the subjects of electronic surveil-

lances, several of them ***have been the subject of overhears***. These overhears and the subjects of the wiretaps are as follows:

William O. Douglas.**XXXXXXXXXXXXXXX XXXXXXXXXXXXX redacted XXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

Thurgood Marshall.**XXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX** Isidore Gibby Needleman, (Communist Party member) 4/30/62 and Clarence Benjamin Jones, (Civil Rights Leader) 2/28/65. **XXXXX**

Enclosure ROUTE IN ENVELOPE

XXXXXXX **SECRET** CONTINUED-OVER

Memorandum to Mr. E.S. Miller
Re: Electronic Surveillance Checks on
Supreme Court Justices

Potter Stewart. Stewart was overheard on one occasion over an electronic surveillance at the office of the Communist Party. Chicago, Illinois, on 3/1/61. **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

In addition to the above, Stewart was the subject of overhears on two occasions on the electronic coverage placed on Henry Brandon, a member of the National Security Council, at the request of the White House. These overhears occurred on 6/23 and 24/70. The latter information has been closely held and not previously disseminated in any way. Brandon was one of the 17 wiretaps for the White House in 1969-1971.

The memorandum furnished to Mr. Callahan noted that with respect to Justices **XXXXX** and Stewart, their summer telephone numbers were changed every summer . We have no way of determining what previous

numbers have been listed to these Justices. Our records failed to show any surveillances on the numbers listed, however.

ACTION:

None. For information. XXXXXX

ADDENDUM: E.S. MILLER 10/11/73

It is pointed out that we were requested to determine whether any of the justices had been the subject of electronic surveillances. It is recommended that we answer this question simply "No," since that is the accurate answer to the question asked.

XXXXXX

XXXXXX

XXXXXX

APPENDIX-J

UNITED STATES GOVERNMENT

MEMORANDUM *****

To : Mr. Gebhardt DATE: August 29, 1973

1- Mr. Gebhardt

From : R.E. Long 1- Mr. Long

Subject: POSSIBLE INTERCEPTION OF TELEPHONE CALLS MADE 8/3/73 BY ASSOCIATE JUSTICE W. O. DOUGLAS AT WHISTLIN' JACK, WASHINGTON INTERCEPTION OF COMMUNICATIONS

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 1/9/90 BY____

This is to set forth results of our highly discreet investigation requested by Acting Deputy Attorney General Ruckelshaus concerning an alleged interception by a male operator 8/3/73 of telephone calls from Associate Justice Douglas made from Whistlin' Jack, Washington, to his Supreme Court office in Washington, D.C., regarding an opinion on the Cambodian bombing. Justice Douglas alleged the interception was possibly by an FBI Agent. It is recommended results of this inquiry be orally furnished Mr. Ruckelshaus.

XXXXXXXXXXXXX REDACTED XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

ENCLOSURE
139-4370-7
CONTINUED--OVER

Document # 134

*****This is only 1 page of a 4 page document with a whole page and paragraphs redacted as a representative sample

APPENDIX-K

John Edgar Hoover
DIRECTOR

Federal Bureau of Investigation
U.S. Department of Justice
Washington, D.C.
October 17, 1936

MEMORANDUM FOR THE DIRECTOR

RE: J.W. COX
Alleged Attempt to Sell Advance Opinions of the Supreme Court of the United States.

The following investigation was conducted on October 16, 1936. by Special Agents **XXXXXX** and A. Rosen: **XXXXXXXXXXXXXXXXXXXX** under whose supervision Mr. Cox works, exhibited Cox's personnel file, which reflects that Cox was born in Mississippi on November 30, 1880, and was engaged in the hardware business for approximately fifteen years. From August 20, 1932, to August 20, 1933, he was employed as an appraiser at the Federal Land Bank, Houston, Texas. On January 2, 1935, he was appointed to his present position as the storekeeper and timekeeper for the Supreme Court Building at an annual salary of $1800.

It was ascertained that the switchboard of the Supreme Court keeps a record of all outgoing and incoming calls,**XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXX REDACTED XXXXXXXXXXXXX**

62-46240-10

COPIES DESTROYED
83 OCT 15 1964

FEDERAL BUREAU OF INVESTIGATION
OCT 20 1936
US DEPARTMENT OF JUSTICE

on one occasion at the Supreme Court Building, at which time Cox offered to sell to him or anyone for spot cash advance information concerning opinions to be handed down. A signed statement is being secured from **XXXX**

The Chief Justice has been fully advised as to the progress of the investigation to date. The Chief Justice suggested the possability that a ***microphone might be concealed in the conference rooms of the Supreme Court,*** and requested that before the investigation is completed, the Agents make a thorough search of the conference rooms.

This information was secured from Agents Rosen and **XXXXXXXX** by **XXXXXXXXXX.**

Respectfully,

E.A. Tamm.

APPENDIX-L

UNITED STATES GOVERNMENT

MEMORANDUM

To : SAC, WFO (66-3491) DATE: 6/26/74

FROM : SA **XXXXXXXX**

SUBJECT: WIRE INTERCEPTS & BUGGING
U.S. SUPREME COURT

On 6/26/74, **XXXXXXXXXXXXXXXXXXX XXXXXXXXX** U.S. Supreme Court, discussed the following with SA **XXXX** (WFO liason Agent for the Court).

The Chief Justice is concerned with the ***possibility of bugging the conference room,*** his ***offices*** at the Court, and his ***residence***. In addition the possibility of intercepting telephone calls made to and from his offices and residence. The concern has been prompted by the forth coming hearings to be held at the Court regarding Watergate. He has no evidence unknown persons would attempt these acts.

By way of background the Chief Justice recently had requested the FBI to conduct a security check at the Court. **XXXXX** was given the assignment to coordinate that matter. WFO requested **XXXXXX** to furnish in writing those specific areas to be surveyed. He refused, and commented the Secret Service was likely more experienced to do the survey. Nothing further has been heard from

XXXXXX .

In light of the above SA XXXXX suggested to XXXXX that in connection with making sweeps to discover bugs and wire intercepts he should consider requesting the services of the Secret Service. He accepted the suggestion.

Above for information only.

XXXXXXX

66-3491
XXXXXXX——————INDEXED
SERIALIZED_____XXXXXX
JUN 26 1974
FBI-WASH. F.O.
DOCUMENT 16